GAN BA

v.

NG YOKE MENG

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING SUMMONS NO. F 2632/1985]
30 SEPTEMBER 1987

LAND LAW: *Application to remove caveat - Sale and purchase agreement - Sale of land - Part of purchase price paid - Alleged moneylending transaction - Whether sale bona fide.*

This was an application to set aside a caveat lodged by the defendant. The plaintiff had entered into a sale and purchase agreement with the defendant's father to purchase the land for a sum of RM35,000. The sum of RM30,000 was paid when the agreement was executed. It was agreed that the balance of the purchase price would be paid within a year. When the plaintiff took steps to register the land in his name, he discovered that the defendant had lodged a caveat. The defendant contended that the land was a collateral to secure a loan of RM30,000 which was given by a company where the plaintiff was a director and shareholder to the defendant. The plaintiff did not refute that allegation which was contained in an affidavit.

Held:
The *status quo* of the parties should be maintained as there was a doubt that the transaction was *bona fide* and that the plaintiff had acquired an interest in the land.

[Application dismissed with costs.]

For the plaintiff - Long Chow Fong; M/s. Chooi & Co.
For the defendant - M.S. Murthi; M/s. Murthi & Partners

JUDGMENT

Siti Norma Yaakob J:

In this application to set aside the caveat lodged by the defendant, the facts giving rise to the plaintiff's cause of action are most unusual.

On 2 September 1983, the plaintiff entered into a sale and purchase agreement with one Ng Kim Teck, wherein the former purchased the latter's property for a consideration of RM35,000. The vendor acknowledged receipt of a sum of RM30,000 from the plaintiff at the time the agreement was executed. Under the First Schedule of the agreement, the plaintiff was to settle the balance of the purchase price of RM5,000 within one year of the date of the agreement i.e. on or before 1 September 1984. Although the plaintiff has not specified when he settled the balance or provided any proof towards such settlement, nonetheless, he had deposed that he had already done so and when he took the necessary steps to have the land registered into his name, he discovered that the defendant, a son of the vendor, had lodged the caveat to prevent any dealings over the property.

In disputing the plaintiff's claim that the sale of his father's property was an outright sale, the defendant alleges that it was a money lending transaction and that the property was used as a collateral to secure the sum of RM30,000 that was lent by the plaintiff's company called Hin Ma Credit Enterprise Sdn. Bhd. to him. A check on this company shows that the plaintiff is one of its directors and shareholders and that the company is engaged in the business of money lending.

The plaintiff has not filed any affidavit to refute these allegations and the fact that the Form 14A was executed on 4 December 1984 lends support to the defendant's allegation that as long as he continued paying up the interest due on the loan, the plaintiff was content to let matters lie and only threatened to effect the registration of the land into his name when the defendant fell into arrears of payment of the interest due.

As from the affidavits filed, I doubt the *bona fides* of the interest acquired by the plaintiff under the sale and purchase agreement and since there has been some sharp practices exercised, it is only right and just that the *status quo* of the parties be maintained and to that extent, I had dismissed the plaintiff's application with costs.

Also found at [1988] 2 CLJ 55